UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/092,873	04/22/2011	John Michael Terry	BRCD-3056.1.US.NP	7552

73257 7590 04/28/2017

PVF -- Brocade Communications Systems Inc.
c/o PARK, VAUGHAN, FLEMING & DOWLER LLP
2820 Fifth Street
Davis, CA 95618

EXAMINER
PATEL, PARTHKUMAR

ART UNIT	PAPER NUMBER
2468	

NOTIFICATION DATE	DELIVERY MODE
04/28/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sy_incoming@parklegal.com
jeannie@parklegal.com
wendy@parklegal.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN MICHAEL TERRY, MANDAR JOSHI, PHANIDHAR KOGANTI, SHUNJIA YU, and ANOOP GHANWANI

Appeal 2016-001236
Application 13/092,873[1]
Technology Center 2400

Before KRISTEN L. DROESCH, LINZY T. McCARTNEY, and STEVEN M. AMUNDSON, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek review under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–21, all of the pending claims in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

[1] Appellants indicate the real party-in-interest is Brocade Communications Systems, Inc. App. Br. 1.

BACKGROUND

The disclosed invention relates to a method and system for remote load balancing in high-availability networks. Spec. Abstract, 2:9–10.

CLAIMED SUBJECT MATTER

Representative claim 1, reproduced from the Claims Appendix of the Appeal Brief, reads as follows (disputed limitations in *italics*):

> 1. A system, comprising:
> a mapping module adapted to *identify at least two egress switches coupled to a common remote destination device for a frame, wherein a respective egress switch of the identified egress switches is coupled to the destination device via one hop*; and
> a determination module adapted to determine an egress switch for the frame from the identified egress switches; and
> a header generation module adapted to *assign an identifier of the determined egress switch to the frame as the frame's egress switch identifier*.

REFERENCES AND REJECTIONS ON APPEAL

Claims 1, 2, 4, 5, 10, 11, 13, 14, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Rai et al. (US 2012/0027017 A1; Feb. 2, 2012) ("Rai").

Claims 3, 6–9, 12, 15–18, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Rai and Mehta et al. (US 2011/0019678 A1; Jan. 27, 2011) ("Mehta").

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments in the Appeal Brief, the Examiner's Answer, and Appellants' arguments in the Reply Brief responsive to the Answer. Any arguments not raised and developed timely in the Briefs have been waived by Appellants.

See 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded by Appellants' arguments. We highlight and address specific findings and arguments below for emphasis.

Appellants argue that Rai does not teach identifying "at least two egress switches coupled to a common remote destination device for a frame, wherein a respective egress switch of the identified egress switches is coupled to the destination device via one hop," as required by independent claims 1, 10, and 19. *See* App. Br. 6. Specifically, Appellants contend that the Examiner's finding that Rai's switches S1 and S4 teach the at least two egress switches is erroneous because "switches S1 and S4 are not coupled to 'a **common remote** destination device for a frame.'" *Id.* at 7.

Appellants' arguments are not persuasive because they are premised incorrectly on a requirement that the at least two egress switches are directly coupled to a common remote destination device.

Figure 1b of Rai is reproduced below:

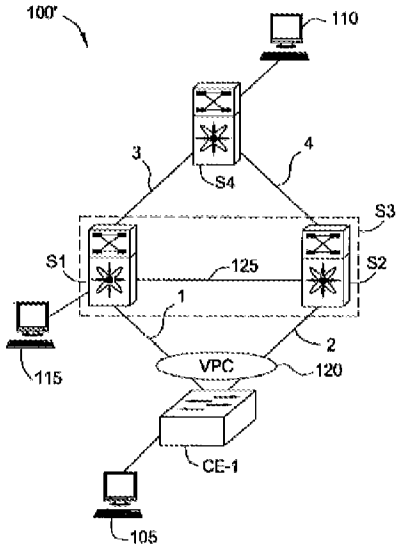

Figure 1b depicts an example network infrastructure. *See* Rai ¶¶ 5, 21. Rai teaches switch S4 coupled directly to common destination host 110 and

switch S1 coupled, via switch S4, to common destination host 110. *See* Rai ¶¶ 20, 22.

Appellants also contend that Rai's description that a forwarding table 210 provides a lookup table mapping ports on device 200 to the address of a device connected to a given port teaches determining a local port coupled to a local device. *See* App. Br. 7 (citing Rai ¶ 28); Rai Fig. 2. Appellants contend that Rai's "mapping does not map egress switches to 'a common **remote** destination device for a frame.'" *Id.*

Appellants' arguments are not persuasive because Appellants do not direct us to objective evidence to demonstrate that Rai's teachings are limited to a local destination device. Appellants also do not direct us to objective evidence to support a specific meaning for the terms "remote" or "remote destination device," such that the terms designate a specific distance. We note that "remote" is a term of relative degree since the remote destination may be located only a short distance from the at least two egress switches or mapping module, but still may be considered remote relative to the egress switches or mapping module. *See Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1302 (Fed. Cir. 2003) (construing the ordinary and customary meaning of "the term 'remote location' to encompass not just locations that are 'far apart' or 'distant,' but also those locations that are merely 'separated by intervals greater than usual.'" (citation omitted)).

Appellants further argue that the Examiner erred in finding that Rai teaches "a **respective** egress switch of the identified egress switches is coupled to the destination device via one hop" because destination c is coupled to one of the identified switches (i.e., S1) via another switch S5,

thus utilizing two links. App. Br. 7. Appellants' arguments are not persuasive because Rai teaches one of the identified switches S4 is coupled to destination host device 110 via one hop. *See* Rai. Fig. 1B, ¶¶ 20, 22.

Related to the previous arguments, Appellants contend that because "a packet egresses from an egress switch to a destination device, a host in Rai is destination device." App. Br. 9. On this basis, Appellants argue: (1) an egress switch in Rai does not share a common host with another egress switch; and (2) if a host in Rai is one hop away from an egress switch, that host is not one hop distance with another egress switch. *See id.*

Appellants' arguments are not persuasive because they are not commensurate in scope with the claim limitations. Claims 1, 10, and 19 do not require an egress switch to *share* a common destination device with another egress switch, and the destination device to be one hop away from all of the at least two egress devices. The recitation "at least two egress switches coupled to a common remote destination device for a frame, wherein a respective egress switch of the identified egress switches is coupled to the destination device via one hop" does not require all of the at least two identified egress switches to be coupled directly (i.e., via one hop) to a common remote destination device, but only requires one respective egress switch of the at least two identified egress switches coupled via one hop to the common remote destination device. Rai teaches switch S4, one of the at least one of the identified egress switches, is coupled to destination host device 110 via one hop. *See* Rai. Fig. 1B, ¶¶ 20, 22.

Lastly, Appellants argue that Rai does not teach "assigning an identifier of the determined egress switch to the frame as the frame's egress switch identifier" because paragraphs 32 and 34 of Rai disclose adding an

L2 multipath header and a frame 500 having a multicast address indicating a MAC address to which the frame 500 is being forwarded. *See* App. Br. 8. Appellants contend a multicast address is not the same as an identifier of the determined egress switch. *See id.*

Appellants' arguments are not persuasive because they do not address sufficiently the Examiner's findings that Rai teaches adding a header for a selected route. *See* Non-Final Act. 5 (citing Rai ¶¶ 32, 34). Rai teaches that the header 505 of the frame 500 includes a route bridge ID, indicating a selected one of the multipath routes to use in forwarding the frame 500, and a multicast address indicating a MAC address to which the frame 500 is being forwarded. *See* Rai ¶¶ 32, 34, Fig. 5. Rai's teaching of a route bridge ID in the header 505 of the frame 500, in addition to the multicast MAC destination address, suggests to one with ordinary skill in the art that the route bridge ID and multicast MAC address in header 505 identifies the corresponding intermediate switch(es) and egress switch(es) of the selected route and destination address.

In the Reply Brief, Appellants present new arguments that are not responsive to any findings raised for the first time in the Answer. *See* Reply Br. 8–10. The substantive responses in the Examiner's Answer are nearly identical to the findings in the Non-Final Action. *Compare* Ans. 2–4, *with* Final Act. 4–6. In the Appeal Brief, Appellants do not substantively address the rejections of dependent claims 2–9, 11–18, 20, and 21 (*see* App. Br. 6–9), but Appellants present substantive arguments for the first time addressing dependent claims 2–9, 11–18, 20, and 21 (*see* Reply Br. 11–18). Arguments raised for the first time in the Reply Brief are deemed waived and will not be considered by the Board without a showing of good cause.

See 37 C.F.R. § 41.41(b)(2) (2012); *see also Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not."). Appellants do not provide good cause for consideration of Appellants' belated arguments. *See* Reply Br. 8–18.

For all of the foregoing reasons, Appellants do not persuade us of error in the Examiner's rejections of claims 1, 2, 4, 5, 10, 11, 13, 14, 19, and 20 as unpatentable over Rai, and of claims 3, 6–9, 12, 15–18, and 21 as unpatentable over Rai and Mehta.

DECISION

We AFFIRM the rejections of claims 1–21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED